

# Notice of Allowability

Application No.

10/660,478

Examiner

Alex B. Toy

Applicant(s)

ZVULONI ET AL.

Art Unit

3739

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 20 July 2006.
2. ☒ The allowed claim(s) is/are 1-72.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is in response to applicant's amendment filed on July 20, 2006. The Double Patenting rejections of claims 1-72 are withdrawn in view of applicant's filing of a proper Terminal Disclaimer.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows to make the Bibliographic Data Sheet correspond with the first sentence of the specification:

Rewrite the first sentence of the specification as follows:

This application is a continuation of U.S. Patent Application No. 09/860,486, filed May 21, 2001 and now U.S. Patent No. 6,706,037, which claims the benefit of priority from U.S. Provisional Patent Application No. 60/242,455, filed October 24, 2000, the disclosure thereof is incorporated herein by reference.

### ***Allowable Subject Matter***

Claims 1-72 are allowed.

***Reasons for Allowance***

The following is a statement of reasons for the indication of allowable subject matter:

Regarding independent claim 1, the related prior art does not disclose or suggest a plurality of cryoprobes contained by a sheath with a sharp distal portion. Bryne, Baust, and Mikus all disclose multiple cryoprobes, but they are not contained within a sheath as claimed.

In prosecuting Parent Application No. 09/860486 (now U.S. Pat. No. 6,706,037 B2), Examiner Kathryn Odland cited Ammar (U.S. Pat. No. 5,993,444) in view of Edwards (U.S. Pat. No. 6,053,937) and further in view of Baust (U.S. Pat. No. 5,916,212). Applicant, however, successfully argued that there is not proper motivation or suggestion to combine the multiple ablation probes contained within a sheath with a sharp distal portion as disclosed by Edwards with the cryoablation probe of Ammar. As previously stated, Baust discloses multiple cryoprobes, but they are not contained within a sheath as claimed. Therefore, the prosecution of the parent application established that there is no proper motivation or suggestion to combine a non-cryogenic ablation probe with the claimed structure with a cryoablation probe to arrive at the invention as claimed.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex B. Toy whose telephone number is (571) 272-1953. The examiner can normally be reached on Monday through Friday, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AT *AT*  
8/2/06

*Roy D. Gibson*  
ROY D. GIBSON  
PRIMARY EXAMINER